(2002) 07 GUJ CK 0032

In the Gujarat High Court

Case No : IT Reference No. 164 of 1989 3 July 2002

Commissioner of Income Tax — APPELLANT

Vs

H.M.T. Construction Co. — RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (2002) 124 TAXMAN 470

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Full Bench

Advocate : Mrs. Mona Bhatt, for the Appellant;

Judgement

K.A. Puj, J.

At the instance of the revenue, the following question of law is referred to this court for its opinion :

"Whether the assessee is entitled to depreciation at the rate of 30 per cent on the dumpers employed in its business of road construction ?"

2. The Income Tax Officer in the course of assessment proceedings allowed depreciation at the rate of 30 per cent : to the assessee.

3. The Commissioner initiated proceedings u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on the ground that the order passed by the Income Tax Officer was erroneous insofar as it was prejudicial to the interest of the revenue. According to the Commissioner, the dumpers were covered in road making plant and machinery'' appearing at item No. III-B(14) of Appendix I, Part I under rule 5 of the Income Tax Rules, 1962 and depreciation was available at the rate of 15 per-cent only. The assessee contended that dumpers came under the classification of ''earth moving machinery'' covered by item III-D(4) of the Appendix. The Commissioner turned down the objections raised by the assessee and directed the Income Tax Officer to allow depreciation at the rate of 15 per

cent.

4. The Tribunal relying on its earlier decision in the case of Hindustan Construction Co. (IT Appeal Nos. 1515 to 1517 (Ahd) of 1986), held that dumpers would be entitled to depreciation at the rate of 30 per cent. The Tribunal, therefore, set aside the order made by the Commissioner u/s 263 and restored the order made by the Income Tax Officer.

5. We have heard Mrs. Mona Bhatt, the learned standing counsel appearing for the revenue. No one appears on behalf of the respondent though notice was duly served.

6. At the time of hearing of this reference, our attention is drawn to the decision of this court in the case of Shiv Construction Co. Vs. Commissioner of Income Tax, wherein this court has confirmed the view taken by the Tribunal that dumpers were machinery or tools used for the business of the assessee and that for that reason, the assessee cannot be denied the claim of depreciation at the rate of 30 per cent on the ground that the dumpers were road transport vehicles.

7. Since the facts of the present case are identical with the facts of the case of Shiv Construction Co. (supra) and no distinguishing feature has been pointed out, we are of the view that the assessee is entitled to depreciation at the rate of 30 per cent on the dumpers employed in the business of road construction.

8. We, therefore, answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue.

9. The reference is, accordingly, disposed of with no order as to costs.